

Docket No.: 64391(41925)
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Christian Hubschwerlen et al.

Application No.: 10/554,732

Confirmation No.: 9693

Filed: January 5, 2007

Art Unit: 4161

For: USE OF OXAZOLIDINONE-QUINOLINE
HYBRID ANTIBIOTICS FOR THE
TREATMENT OF ANTHRAX AND OTHER
INFECTIONS

Examiner: Paul E. Zarek

***PETITION TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT
AND RESET THE PERIOD FOR REPLY TO OFFICE ACTION***

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a Petition to request withdrawal of an erroneous holding of abandonment and resetting of the time to respond to an Office Action in the above captioned matter on the grounds that the below described Office Action from the U.S. Patent and Trademark Office (USPTO) was never received by our firm as evidenced by our docketing records.

STATEMENT OF FACTS

1. An Office Action setting forth a Restriction Requirement (mailed on September 3, 2008) was received and responded to on October 29, 2008.

2. As part of routine monitoring of electronic records available for the application via PAIR, the undersigned Attorney(s) learned on June 22, 2009, that an Office Action had been issued from the USPTO on December 19, 2008. By the time of that discovery (June 22, 2009), the statutory six (6) month period for reply had expired. Without delay, the undersigned Attorney(s) contacted Examiner Zarek to advise him of same, and a petition to revive the application was promptly docketed.

3. The undersigned Attorney(s) subsequently received a Notice of Abandonment (mailed on August 21, 2009). As grounds for the abandonment, the Notice indicated that Applicant failed to reply to the Office Action purportedly mailed by the USPTO on December 19, 2008. The within Petition was then diligently prepared and filed without delay.

4. As evidenced by the undersigned firm's docketing records (Exhibit 1), the Office Action mailed on December 19, 2008, was never received by our firm. Thus, it is respectfully requested that the erroneous holding of abandonment be withdrawn, and the mail date of the Office Action be reset.

RELIEF REQUESTED

Applicants respectfully request the Commissioner, based on the following arguments and the foregoing facts and statements, to withdraw the erroneous holding of abandonment, and restart the period for replying to the Office Action dated from December 19, 2008, the original mailing date of the Office Action, to present time.

ARGUMENT

In the instant case, Applicants have demonstrated that the Office Action dated December 19, 2008, was never received and docketed by our firm. As such, Applicant had no ability to file a response thereto. Thus, Applicants request that the erroneous holding of abandonment be withdrawn and the period for reply be reset so as to provide Applicants with a proper period for filing a suitable response.

REQUIRED FEE

Attorneys for Applicant believe no fee is required for the submission of this Petition. Moreover, a fee is not believed to be required for the consideration of the within Petition because the petition addresses an error of the Patent Office. However, if for any reason a fee is required for consideration of the within Petition, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105**.

ADDITIONAL INFORMATION

If the USPTO requires any further information and/or clarification regarding the above, then Applicant respectfully requests that the undersigned be telephoned immediately at the below listed number.

Dated: September 17, 2009

Respectfully submitted,

Customer No. 21874

Electronic signature: /Christine C. O'Day/
Christine C. O'Day

Registration No.: 38,256

Nicholas J. DiCeglie, Jr.

Registration No.: 51,615

EDWARDS ANGELL PALMER & DODGE LLP

P.O. Box 55874

Boston, Massachusetts 02205

Hubschwerlen et al.
U.S.S.N. 10/554,732
Page 4

(617) 517-5558
Attorneys/Agents For Applicant